

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
37.30.405 pertaining to Vocational	)	AMENDMENT
Rehabilitation Program Payment for	)	
Services	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On June 17, 2006, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) The consumer, except as otherwise specifically authorized in this subchapter, is responsible for paying the costs for the provision of any vocational rehabilitation services that are authorized to be provided to the consumer through the consumer's IPE.

(2) An applicant or a consumer is not responsible for paying the costs for the provision of the following vocational rehabilitation services:

(a) assessment for determining eligibility and priority for vocational rehabilitation services except for trial work experience type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities, and capacity to perform in work situations;

(b) vocational rehabilitation counseling and guidance;

(c) referral and related services;

(d) job development and placement related services;

(e) personal assistance services; and

(f) any auxiliary aid or service or other rehabilitation technology, including reader services, that the department determines a person with a disability may require in order to apply for or receive vocational rehabilitation services.

(3) A consumer who is eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under

Titles II and XVI of the Social Security Act is not responsible for paying the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2003~~ 2006 U.S. ~~d~~Department of ~~h~~Health and ~~h~~Human ~~s~~Services poverty guidelines for households of different sizes.

(b) The maximum allowable value for financial resources is calculated at 50% of the maximum allowable annual income level.

(5) The department does not pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that those costs are reimbursable through another governmental program or there is another source of funding that is available to be applied to the costs of all or a portion of the services.

(a) If benefits from any other program or other sources of funding are not immediately available for the payment of any or all of the costs of services for the consumer, the department may temporarily pay for the costs for the provision of services until those other benefits or other sources of funding become available.

(b) If the determination of the availability of benefits or other sources of funding would delay the provision of vocational rehabilitation services to a consumer who is at extreme medical risk or who is to receive an immediate job placement opportunity, the department may temporarily pay for the costs for the provision of services until those other benefits become available. The department makes the determination of extreme medical risk based upon medical evidence provided by an appropriate licensed professional.

(6) The responsibility of a consumer for the payment of the costs for the provision of services is initially determined by the department prior to the provision to the consumer of any services listed in the consumer's IPE.

(a) The financial responsibility of a consumer is redetermined at any time that there is a change in the income and resources available to the consumer.

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-310, MCA

3. The proposed amendment is to ARM 37.30.405, Vocational Rehabilitation Program: Payment For Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2003 U.S. Department of Health and Human Services poverty guidelines for households. The proposed amendment would revise this level by replacing the 2003 guidelines with the 2006 guidelines.

The department some time ago in reviewing the possible means by which to set maximum income levels for purposes of eligibility for financial support in service purchase determined that the poverty guidelines were the most appropriate means. The poverty guidelines have been established by the federal government for use in many respects inclusive of eligibility determinations for certain federally funded assistance programs. The guidelines are based upon an established methodology and are annually revised. There is broad national acceptance and use of the guidelines. The department considered establishing its own methodology but found that it did not have the resources or expertise by which to develop and maintain its own methodology. The 2006 guidelines and methodology can be viewed on the U.S. Department of Health and Human Services website at [www.aspe.hhs.gov/poverty/06poverty.shtml](http://www.aspe.hhs.gov/poverty/06poverty.shtml).

This proposed change, implementing the most recent set of relevant poverty level income amounts, is necessary so as to maintain the currency of the financial criteria. The older amounts fail to account for various economic changes over time such as inflation that are factors in dynamically defining and distinguishing a class of persons with limited income who are at or below the poverty level for purposes of federal programs and via this incorporated reference are the intended beneficiaries of the vocational rehabilitation services. Implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

4. Interested persons may submit their data, views, or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 15, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov) no later than 5:00 p.m. on June 15, 2006.

6. If the Department of Public Health and Human Services receives requests

for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 649 based on the 6,489 of individuals served in 2006 affected by rules covering vocational rehabilitation services.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 8, 2006.